

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 480 be amended to read as follows:

1 Page 11, between lines 39 and 40, begin a new paragraph and insert:
2 "SECTION 9. IC 22-2-13 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2007]:

5 **Chapter 13. Family Military Leave**

6 **Sec. 1. As used in this chapter, "active duty" has the meaning**
7 **set forth in IC 5-9-4-2.**

8 **Sec. 2. As used in this chapter, "employee" means an individual**
9 **who:**

10 **(1) has been employed for at least twelve (12) months by an**
11 **employer from whom the individual has requested family**
12 **military leave under this chapter; and**

13 **(2) worked at least one thousand two hundred fifty (1,250)**
14 **hours for the employer described in subdivision (1) in the**
15 **fifty-two (52) weeks immediately preceding the week that the**
16 **individual begins a period of family military leave under this**
17 **chapter.**

18 **Sec. 3. As used in this chapter, "employee benefits" means**
19 **benefits, other than salary or wages, provided or made available to**
20 **an employee by an employer, including group life insurance, health**
21 **insurance, disability insurance, or a pension, or any combination**
22 **of these benefits, regardless of the manner in which the benefits are**
23 **provided or made available.**

24 **Sec. 4. As used in this chapter, "employer" means:**

25 **(1) an individual;**
26 **(2) a partnership;**
27 **(3) an association;**
28 **(4) a limited liability company;**
29 **(5) a corporation;**
30 **(6) a business trust;**
31 **(7) the state; or**

(8) a municipal corporation (as defined in IC 36-1-2-10).

Sec. 5. As used in this chapter, "family military leave" means an absence from employment requested by an employee who is the spouse or parent of an individual called to active duty.

Sec. 6. (a) An employer that employs:

(1) at least fifteen (15) but not more than fifty (50) employees shall provide up to fifteen (15) days; and

(2) more than fifty (50) employees shall provide up to thirty (30) days;

of family military leave to an employee who is the spouse or the parent of an individual called to active duty during the time federal or state deployment orders are in effect.

(b) If the spouse or the child of the employee who has been granted family military leave has the term of active duty extended, the employee is entitled to another period of family military leave for each extension of the term of active duty.

Sec. 7. (a) If an employee intends to take five (5) or more consecutive work days of family military leave, the employee must give at least fourteen (14) days advance notice to the employee's employer of the following:

(1) The date on which the employee intends to begin family military leave.

(2) The expected duration of the family military leave.

(b) If the employee intends to take family military leave for less than five (5) consecutive work days, the employee shall give the employer as much advance notice as practicable.

Sec. 8. If an employee takes family military leave under this chapter, the employee's employer may require the employee to provide certification from the proper military authority to verify the employee's eligibility for the family military leave. If required, the employee shall provide the employer with the certification not later than ten (10) days after the employee returns to work.

Sec. 9. An employee is not entitled to family military leave as provided by this chapter unless the employee has exhausted all accrued:

(1) vacation;

(2) personal;

(3) compensatory; and

(4) other;

leave granted to the employee by the employer, except sick or disability leave.

Sec. 10. This chapter does not require that salary or wages be paid to an employee on family military leave unless the salary or wages are paid under any of the following:

(1) An agreement or contract between the employer and the employee or the employee's representative.

(2) A policy of the employer.

Sec. 11. This chapter does not prohibit an employee from taking

1 leave granted under any of the following:

- 2 (1) An agreement or contract between the employer and the
- 3 employee or the employee's representative.
- 4 (2) A policy of the employer.
- 5 (3) Another law.

6 Sec. 12. (a) This section does not apply if an employer can prove
7 that an employee was not restored to a position as provided in
8 subsection (b) because of conditions unrelated to the employee's
9 exercise of rights under this chapter.

10 (b) If an employee takes family military leave in compliance
11 with this chapter and returns to work, the employee's employer
12 shall immediately do one (1) of the following:

- 13 (1) Return the employee to the position of employment that
- 14 the employee had before the employee took the family
- 15 military leave, if the employer has not filled or eliminated the
- 16 employee's previous position.
- 17 (2) Place the employee in another position of employment that
- 18 provides compensation, employee benefits, working hours,
- 19 working shifts, and other terms and conditions equivalent to
- 20 the position of employment the employee had before the
- 21 employee took the family military leave, if the employer has
- 22 filled the employee's previous position.

23 Sec. 13. Except as provided in:

- 24 (1) an agreement or contract between the employer and the
- 25 employee or the employee's representative;
- 26 (2) a policy of the employer; or
- 27 (3) section 14 of this chapter;

28 an employee who is on family military leave is not entitled to
29 compensation, additional seniority, or other benefits the employee
30 would be entitled to if the employee were available for work.

31 Sec. 14. (a) During the time an employee is on family military
32 leave, the employer shall continue to provide employee benefits to
33 the employee at the employee's expense. The employer and
34 employee may negotiate for the employer to maintain employee
35 benefits at the employer's expense for the duration of the family
36 military leave.

37 (b) Taking family military leave may not result in loss of an
38 employee benefit accrued before the date the leave begins.

39 (c) This chapter shall not be construed to affect or diminish the
40 contract rights or seniority status of another employee of an
41 employer covered under this chapter.

42 (d) The family military leave rights provided under this chapter
43 may not be diminished by:

- 44 (1) an agreement or contract between the employer and the
- 45 employee or the employee's representative;
- 46 (2) a policy of the employer; or
- 47 (3) an employee benefit plan.

48 Sec. 15. An employer and employee may agree to alternative

1 employment conditions or terms during the time the employee is on
 2 family military leave. An agreement under this section does not
 3 limit an employee's right to family military leave.

4 **Sec. 16. (a) An employer shall not:**

- 5 (1) interfere with;
- 6 (2) restrain; or
- 7 (3) deny;

8 the exercise of or the attempt to exercise a right provided under
 9 this chapter. The prohibitions in this section include discharging,
 10 fining, suspending, disciplining, or discriminating against an
 11 employee who takes family military leave.

12 **(b) An employer may:**

- 13 (1) discharge;
- 14 (2) suspend; or
- 15 (3) discipline;

16 an employee for refusing to accommodate family military leave
 17 granted to another employee under this chapter.

18 **Sec. 17. (a) An employee who is denied family military leave by**
 19 **the employee's employer may bring a civil action against the**
 20 **employer to enforce the rights of the employee under this chapter.**

21 **(b) If an employer is found to have denied family military leave**
 22 **to an employee entitled to family military leave, the court may do**
 23 **the following:**

24 **(1) Award:**

- 25 **(A) actual damages; and**
- 26 **(B) court costs and reasonable attorney's fees;**

27 **to the prevailing employee.**

28 **(2) Enjoin further violation of this chapter."**

29 Page 12, between lines 19 and 20, begin a new paragraph and insert:

30 "SECTION 12. [EFFECTIVE JULY 1, 2007] **(a) IC 22-2-13, as**
 31 **added by this act, does not excuse noncompliance with a provision**
 32 **of a collective bargaining agreement or another employee benefit**
 33 **program or plan in effect on July 1, 2007, that is not in substantial**

1 **conflict with IC 22-2-13, as added by this act. IC 22-2-13, as added**
2 **by this act, does not justify reduction by an employer of employee**
3 **benefits provided by the employer that exceed the benefits required**
4 **by IC 22-2-13, as added by this act.**

5 **(b) This SECTION expires July 1, 2008."**

6 Renumber all SECTIONS consecutively.

(Reference is to SB 480 as printed February 16, 2007.)

Senator SIMPSON